

EXHIBIT 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LINCOLN JONES, JR. and)	Case No.:
MUYESSER NILE JONES,)	5:13-CV-02390-LHK
individually and as trustees of)	
the Lincoln and M. Nile Jones)	
Revocable Trust; and)	
PROJECT SENTINEL, INC.,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
TRAVELERS CASUALTY)	
INSURANCE COMPANY)	
OF AMERICA,)	
)	
Defendant.)	
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VIDEOTAPED DEPOSITION OF MATTHEW R. NOEL

Costa Mesa, California

Thursday, June 5, 2014

Reported by: Jana J. Bommarito, CSR No. 10880

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NORTHERN DISTRICT OF CALIFORNIA
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PROJECT SENTINEL, INC.,)
Plaintiffs,)
vs.)
TRAVELERS CASUALTY)
INSURANCE COMPANY)
OF AMERICA,)
Defendant.)

Videotaped deposition of MATTHEW R. NOEL,
taken on behalf of Plaintiffs, at Hahn & Bowersock
Court Reporters, 151 Kalmus Drive, Suite L1,
Costa Mesa, California, beginning at 9:31 a.m., and
ending at 6:49 p.m., on Thursday, June 5, 2014,
before Jana J. Bommarito, Certified Shorthand
Reporter No. 10880.

1 MATTHEW R. NOEL,
2 having been first duly sworn by the Certified
3 Shorthand Reporter, was examined and testified as
4 follows:

09:32:05

6 EXAMINATION

7 BY MR. BRANCART:

8 Q Good morning, sir.

9 A Good morning.

09:32:07

10 Q Would you please state your full name and
11 spell it.

12 A Matthew, M-a-t-t-h-e-w, middle initial R.,
13 last name Noel, N-o-e-l.

14 Q Mr. Noel, in the course of your work, you
09:32:21 15 typically go by the first name of Matt, correct?

16 A That is correct.

17 Q Are you presently employed?

18 A Yes, sir.

19 Q And where are you presently employed?

09:32:30

20 A I work for AmTrust Insurance Company.

21 Q State for me your business address.

22 A I work out of my house.

23 Q Where -- whatever you use for your
24 business address would be fine.

09:32:44

25 A Okay. 27291 Eastridge Avenue,

1 the possibility of ineligibilities.

2 BY MR. BRANCART:

3 Q Uh-huh.

4 A And to what extent that posed to an

14:34:59 5 increase in hazard that may make the account beyond
6 what the product was designed to accept and
7 underwrite and price for.

8 Q Did these ineligibilities that are listed
9 here on the top of Page 344, if an Apartment Pac

14:35:54 10 risk was classified as one of these ineligible
11 operations, was it automatically declined if it was
12 an Apartment Pac Plus with the standard
13 underwriting?

14 MR. COOPER: Objection; vague, lacks
14:36:18 15 foundation.

16 THE WITNESS: I don't believe the eligibility
17 requirements were any different between the
18 Master Pac and the Master Pac Plus. They were
19 generally the same.

14:36:32 20 BY MR. BRANCART:

21 Q Okay. So if a -- if a -- an Apartment Pac
22 risk were determined to be one of these ineligible
23 operations listed at the top of Page 384 of
24 Exhibit 45, was it automatically declined while you
14:36:58 25 were at Travelers?

1 doesn't -- it's -- it determines on how it's rated
2 and how it's classified. As you mentioned before,
3 it could be a 10 C or it could be a KK 3 for
4 purposes of tracking pricing and -- and statistics,
14:38:10 5 I assume.

6 But the same account, whether or not
7 it's -- because the -- the system determines whether
8 or not it's Master Pac or Master Pac Plus based on
9 the data input by the agent. If the agent doesn't
14:38:29 10 put in the information and they just submit a paper
11 application, then it would be input by our rating
12 that it would still decline the thing saying that it
13 doesn't meet these eligibility requirements. And if
14 it's -- if you say, "No, it doesn't meet the
14:38:45 15 eligibility," then yes, it would decline.

16 Q Okay. And -- and that is an automatic
17 declination executed by the commands from the
18 TravelersExpress program?

19 A Yes.

14:39:15 20 Q Okay. Let's now take a look at
21 Exhibit 44.

22 Exhibit 44 -- well, first of all, do you
23 recognize it?

24 A No.

14:39:30 25 Q It's a document, "How to Quote and Issue

1 A Yes.

2 Q If it wasn't checked, would the automatic
3 underwriting still process?

4 A No.

15:01:33 5 Q Do you know how it is that this is
6 supposed to be -- this -- whether this thing was
7 checked "yes" or "no" on the bottom of 374, this was
8 supposed to be done by the agent, correct?

9 A Correct.

15:01:46 10 Q All right. If you turn to Page 3708 --

11 A Uh-huh.

12 Q -- it asks a question here, "Has insurance
13 coverage been cancelled, declined or nonrenewed in
14 the last three years?"

15:02:16 15 A Yes, I see that.

16 Q Why is that significant from an
17 underwriting point of view?

18 A Well, it goes to the account's
19 acceptability for being placed with a new carrier.

15:02:31 20 If it's been cancelled, you would want to know why
21 it was cancelled, what were the reasons behind the
22 cancellation. If it was declined, they'd want --
23 they'd want to know an explanation of all those, why
24 it was declined, nonrenewed, cancelled. What are
15:02:49 25 the reasons why?

1 the information that was provided to me during
2 this.

3 Q Right. And I never -- never worked at
4 Travelers, and -- and all I know is what you know.
15:12:06 5 I saw it in the documents. It was closed without
6 pay.

7 A Right. Yeah, yeah. Okay.

8 Q Yeah. All right. Okay.

9 Sir, would you please take a look at 3715.

15:12:54 10 A (Witness complies.)

11 Q This says "Additional Interests."
12 What information is recorded there?

13 A This is input by the agent themselves as
14 to people that have a vested interest in the
15:13:13 15 property --

16 Q Uh-huh.

17 A -- as far as either a mortgagee, a loss
18 payee on a loan or a lease, so on and so forth.
19 Additional insureds may be other parties that have a
15:13:29 20 financial concern about the property.

21 Q Why would a mortgagee be notified of
22 insurance?

23 A Because they've put a loan out, and if the
24 loan -- if -- if the insurance is cancelled, then
15:13:44 25 there's no property insurance on that -- the

1 property that they've lent money on. So then that
2 would trigger them to place what they call "forced
3 place coverage" in the event so that they don't have
4 any uninsured properties.

15:14:02 5 Q Okay. If you're a permit owner, what are
6 the benefits of having insurance versus not having
7 insurance?

8 MR. COOPER: Objection; vague, overbroad, lacks
9 foundation.

15:14:18 10 THE WITNESS: The benefit of insurance is that
11 you're not subject to any financial loss that's not
12 recoverable by insurance that could be, and you have
13 peace of mind of knowing that there's also liability
14 coverage in the event of an injury at those premises
15:14:39 15 that you could be held liable for, for millions of
16 dollars that may go affect your financial
17 stability.

18 BY MR. BRANCART:

19 Q Sir, would you turn to the next page,
15:14:55 20 "General Issue Information."

21 A (Witness complies.)

22 Q It says here "Audit Indicator, not
23 audible."

24 A Uh-huh.

15:15:09 25 Q What does that mean?

1 the Joneses?

2 A I believe I went into the claims notes and
3 read that it was an OSHA -- a possible OSHA
4 violation based on a railing, but it was, at the
15:24:16 5 current time, being still investigated; that no
6 determination of lack of maintenance or any other
7 existing problems were an occurrence, so it was not
8 acted upon with any decision at that time.

9 Q Okay. What's the next event or occurrence
15:24:44 10 that you recall regarding your interaction with the
11 Joneses?

12 A I believe that would have been in the form
13 of a red flag received into my work bin at my desk,
14 computerwise, from -- I believe it came from
15:25:05 15 Michael Leeds who reviewed Stephanie Frazier's notes
16 and red flagged it to me to review the account based
17 on what he had discovered in his review of the
18 account.

19 Q Okay. And what is it that you recall that
15:25:24 20 Leeds had discovered that caused the issuance of red
21 flag?

22 A Well, I believe he reviewed the same
23 claims notes that I did possibly for -- in -- in
24 more detail, because I was really just looking
15:25:39 25 towards what the cause of the ARN was, which at the

1 time was a Cal/OSHA violation.

2 But I believe he reviewed the entire
3 claims notes, and I believe there was some reference
4 within the claims adjuster's documentation that
15:25:58 5 there may have been subsidized housing tenants
6 within this building.

7 Q Okay. When you say that you received a
8 red flag, does that mean it was some kind of
9 electronic form of mail that you received from
15:26:17 10 Leeds? What -- what is it you recall receiving from
11 him?

12 A Well, on our desktop we have a work list
13 of items that have to be addressed on a daily basis.
14 Referrals will come in on new business. Referrals
15:26:32 15 will come in on all other things. Red flag is when
16 an account that comes up that's been sent by
17 whomever to say, "You need to review this."

18 Q Uh-huh. Uh-huh.

19 A At that point we then go into the account
15:26:44 20 notes page and review what the reason for the
21 referral is or the red flag referral.

22 Q Going back to Exhibit 29, let's see if we
23 can find --

24 A 3703.

15:27:23 25 Q 3703. All right.

1 information being received by the agent, that we
2 indicated that we would be nonrenewing the
3 account.

4 Q Okay. So between -- you make a -- and
15:39:53 5 this is a decision that you make, correct? You have
6 to make --

7 A Decision to nonrenew?

8 Q Yes.

9 A Yes.

15:40:01 10 Q Okay. And do you discuss this decision
11 with anyone within the Travelers organization?

12 A No, not on this case.

13 Q Okay. So you've -- you make the decision
14 sometime after receiving Ingrid's e-mail here
15:40:23 15 identified as the November 12, 2012, 8:37 a.m.
16 e-mail, correct?

17 A Uh-huh.

18 Q And -- is that a "yes"?

19 A Yes.

15:40:34 20 Q Okay. And is there anything that occurs
21 between receipt of this e-mail from Ingrid and you
22 making the determination or decision that you're
23 going to nonrenew?

24 A At some point in time I -- although I
15:40:59 25 don't have a specific reference in the timing of it,

1 A I would say that NIS would submit
2 something to me and they would have gone beyond just
3 telling me what percentage of tenants they are.
4 They would have said, "This is an account that has
16:36:56 5 established long-term tenants. We have a history of
6 no losses. The property -- property is owned --
7 been owned by this -- this property owner for X
8 amount of years." And I would consider all those
9 factors rather than simply a percentage of the
16:37:14 10 tenants --

11 Q Okay. But --

12 A -- that are subsidized.

13 Q If -- if you had all those favorable
14 indicators, what is the maximum number of subsidized
16:37:25 15 tenants -- we're now referring to government
16 subsidies -- subsidized tenants that you would, in
17 exercising your judgment, deem to be eligible for
18 Apartment Pac?

19 A My personal cut-off point was, I guess, at
16:37:46 20 50 percent, depending on the size of the account. I
21 guess if there were 200 units and 100 of them were
22 subsidized, that would be a little bit different
23 than when you have a smaller percentage of
24 subsidized on a smaller basis.

16:38:07 25 Q Explain to me the relationship between a

1 small apartment building that has 50 percent
2 Section 8 and a large apartment building that has
3 50 percent Section 8 in terms of whether or not in
4 exercising your judgment they would be ineligible
16:38:33 5 for Apartment Pac.

6 A I think it's a control issue about how
7 many of the units actually are -- when you have
8 three out of seven, it's a little more manageable, I
9 guess in my idea, my perception, from the -- from a
16:38:51 10 property owner perception than it would be if you
11 had 200 units and 100 of them were subsidized.

12 Q Okay. Three out of seven, your perception
13 is more manageable. 30 out of 70, how does that
14 impact your analysis?

16:39:16 15 A That would be -- I would take more
16 consideration. 30 out of 70 being, what, less --
17 less than 50, but closer to 40. It wouldn't be
18 probably eligible, number one, for -- for our
19 accounts because if you had that many units, it
16:39:38 20 probably would be outside of our -- our availability
21 and our eligibility.

22 Q I think you're exactly right. I mean, I
23 guess you could spread it out over a number of
24 buildings, but yeah.

16:39:47 25 A But the total insured value may exceed our

1 Express --

2 Q Right.

3 A -- authority levels.

4 Q What is it about -- what is it about -- is

16:39:54 5 there -- is there -- in your mind when we were
6 talking about subsidized house and assessing risk,
7 is there -- is there essentially a critical mass or
8 tipping point when it comes to the number of
9 subsidized tenants in an apartment building that
16:40:12 10 could have -- that could generate risks?

11 A Is there a tipping point? Was that the
12 question? I --

13 Q Uh-huh, yeah.

14 A None specifically, no.

16:40:27 15 Q Okay. Is there -- is there a critical
16 mass you -- that -- that you would not want to
17 exceed in terms of the number or percentage of
18 subsidized tenants in any circumstance?

19 A I believe I -- my personal cut-off was at
16:40:46 20 50 percent.

21 Q Okay.

22 A Or higher, higher than 50 percent.

23 Q If you go over 50 percent, then that
24 exceeds what you --

16:40:59 25 A My comfort level.

1 Q Okay. The 50 percent mark, however, is
2 contrary to the written guidance that Travelers puts
3 out, true?

4 A True.

16:41:14 5 Q Under the guidance of Travelers, if you're
6 to apply your definition of subsidized public,
7 government-funded complex, having one person who's a
8 subsidized -- governmentally-subsidized tenant would
9 be a disqualifying event, right?

16:41:33 10 A True.

11 Q Did you -- so that's -- for NIS you
12 indicated that you would be willing to go as high as
13 50 percent if there were other factors. Fifty
14 percent of the tenants could be subsidized.

16:41:53 15 Are there buildings -- go ahead.

16 A Go ahead.

17 Q Are there buildings that you recall in
18 which up to half the residents were Section 8
19 tenants that you deemed -- that -- that -- that you
16:42:10 20 were willing to, in exercise of your judgment, not
21 characterize as subsidized housing?

22 MR. COOPER: Object to the -- it's ambiguous.

23 THE WITNESS: I would say no.

24 BY MR. BRANCART:

16:42:26 25 Q Okay. Did you ever have any discussions

1 page, which is 3734. We have here a letter from
2 Lisa to Chris Bennett and John -- I can't say his
3 last name -- Corneau.

4 A Corneau.

17:28:01 5 Q Had you seen this before?

6 A Yes.

7 Q Okay. And then that's your e-mail that's
8 on the top of the page, correct?

9 A No. That's from Lisa to me.

17:28:16 10 Q Okay. I'm sorry. I'm sorry.

11 Your e-mail is the next one; is that
12 correct?

13 A Yes.

14 Q Okay. So your e-mail is the Matt Noel

17:28:22 15 that appears at the bottom of 3733; is that
16 correct?

17 A Correct.

18 Q Okay. Okay. Let me show you, if I could,
19 the Exhibit Number 62, and this is Bates 3727 to

17:28:57 20 3731. I'll give that to your attorney.

21 (Whereupon **Exhibit 62** was marked for
22 identification, a copy of which is attached hereto.)

23 BY MR. BRANCART:

24 Q Do you recognize these e-mails, sir?

17:29:27 25 A Yes.

1 Q Okay. And what are they?

2 A E-mail correspondence to and from me and
3 various people at National Insurance Solutions.

4 Q Okay. If you go to the page 3730, this is
17:29:49 5 your e-mail of November 9th to -- to Lisa Mota
6 (sic), your contact at NIS, correct?

7 A Correct.

8 Q If you go to the top of the page, it
9 mentions an agent by the name of Craig Franklin.

17:30:14 10 Do you see that?

11 A Yes.

12 Q Did you ever do any work with Mr. Franklin
13 as an agent at NIS?

14 A Well, it's possible that I did. I don't
17:30:29 15 specifically recall direct conversations with
16 Craig Franklin, no.

17 Q Okay. All right. Sir, if you go now to
18 the Page 3728, at the bottom of the page, this is
19 Ingrid e-mailing you, correct?

17:30:58 20 A Yes.

21 Q It indicates that Ingrid spoke with
22 Mr. and Mrs. Jones on Friday.

23 See that?

24 A Yes, sir.

17:31:10 25 Q And "Insured wanted to know why we needed

1 Q Okay. Did you misrepresent to the
2 Joneses -- in your statement for their nonrenewal,
3 did you misrepresent the reason for their
4 nonrenewal?

17:50:47 5 A Not to my knowledge.

6 Q Okay. Did you conceal from the Joneses
7 the real reason why you were nonrenewing them?

8 A No.

9 Q Okay. Did you knowingly withhold from the
17:51:07 10 Joneses a reason why you had decided to nonrenew
11 knew them when you wrote this summary of the
12 statement of reason for nonrenewal?

13 MR. COOPER: Objection; vague.

14 THE WITNESS: Knowingly withholding information
17:51:33 15 is pretty broad. I would say more accurately there
16 were other factors besides this specific reason
17 given that may have been taken into consideration in
18 making my final decision of the nonrenewal.

19 BY MR. BRANCART:

17:51:53 20 Q Okay. Was the code -- the code violation
21 that caused the ARN, was that a reason?

22 A The OSHA code violation? No, sir.

23 Q Okay. Was the delay between Friday and
24 Monday morning at 8:30 in the morning, Mrs. Jones
17:52:18 25 not returning Ingrid's telephone call, was that a

1 reason?

2 A The delay was not, no.

3 Q Okay. Was the fact that Ms. Jones accused
4 Travelers of discrimination and was hostile, as you
17:52:33 5 wrote, was that a reason?

6 A Not that they -- not because she indicated
7 that we may be discriminating.

8 Q Okay. So -- okay. Was it that -- was
9 it -- was it the application, supplemental

17:52:59 10 application that was provided to you for the
11 incorrect address by NIS, was that a reason?

12 A It was considered, yes.

13 Q Okay.

14 A The supplemental application that was
17:53:09 15 given to me was part of the consideration process.

16 Q All right. Did -- but at that time you
17 didn't even observe that it was a different address.
18 You didn't know that?

19 A That's correct.

17:53:21 20 Q Okay. So --

21 A But the address is still a building
22 with -- on the premises of the property itself.
23 There's two buildings on the property.

24 Q There's -- there are two addresses. There
17:53:36 25 are not two -- I think they're actually different

1 your underwriting team in -- in Spokane, correct?

2 A Correct.

3 Q You were instructed to make these
4 documents accurate, correct?

17:57:28 5 A Correct.

6 Q In honoring an -- an accurate statement of
7 why you had made a determination of nonrenewal, you
8 wrote that the Joneses were ineligible because they
9 had Section 8 tenants, true?

17:57:46 10 A That is the state specific reason I gave
11 that would be transferred to the notice of the
12 nonrenewal, yes.

13 Q Okay. Now, my question to you, though,
14 was -- is that: Did you hold or conceal a real
17:58:01 15 reason for the nonrenewal?

16 MR. COOPER: Objection; vague, argumentative.

17 THE WITNESS: No, I did not conceal anything.

18 BY MR. BRANCART:

19 Q Okay. All right. So if you didn't
17:58:10 20 conceal anything, this is a complete and full and
21 accurate statement of the basis of the nonrenewal --

22 MR. COOPER: Objection.

23 MR. BRANCART: -- correct?

24 MR. COOPER: Objection; argumentative.

17:58:19 25 THE WITNESS: It is the specific reason why we

1 nonrenewed.

2 BY MR. BRANCART:

3 Q Okay. Was there a nonspecific reason?

4 A There are different factors that

17:58:30 5 accumulated that made me make the final decision,
6 and using this specific language is all that's
7 required. The State only requires a state specific
8 nonrenewal reason.

9 I was trying, in fact, to not pile on, if
17:58:53 10 you will, on providing other information that I may
11 have considered in my nonrenewal determination, such
12 as a possible misrepresentation to my knowledge at
13 the time of the application, the fact that there was
14 also a pending loss, and the fact that the insured
17:59:19 15 appeared to be uncooperative in providing the
16 information to Travelers and/or their own agent that
17 we had requested.

18 Q Okay. The lack of cooperation wasn't due
19 to delay, correct?

17:59:35 20 MR. COOPER: Objection; vague.

21 BY MR. BRANCART:

22 Q You're -- you're not claiming that, are
23 you?

24 A Not specifically due to delay.

17:59:40 25 Q Okay. All right. You're claiming that

1 fluctuates based on the tenants, and -- and like
2 I've mentioned before, the -- this one indicates
3 that they have long-term tenants, so -- which means
4 that to me that they have a consistency there.

18:20:34 5 So the 20 percent may have just been a
6 figure that she was told by somebody else that
7 worked at National Insurance Solutions that I may
8 have said 20 percent along the way.

9 Q Okay. Sir, she is -- before she puts --
18:20:49 10 she wanted to talk to you before she puts through
11 this application.

12 A Uh-huh. Uh-huh.

13 Q Camie is going to use for this
14 particular -- it appears for the size of this unit
18:21:02 15 would be using TravelersExpress, true?

16 A True.

17 Q Okay. When Camie came to the portion of
18 the TravelersExpress interface that said, "Do you
19 have any ineligible activities," and one of them was
18:21:22 20 subsidized housing, it was -- she would go ahead and
21 say, "I don't have any ineligible activities,"
22 correct?

23 A Correct.

24 Q She would click that with the
18:21:32 25 understanding that you had already -- you'd approved

1 her clicking that she had no ineligible
2 activities?

3 A Yes.

4 Q Okay.

18:21:41 5 A That the -- the -- not necessarily
6 activities, but the occupancies that had been
7 pre-approved and reviewed by me and told her that we
8 would accept that.

9 Q Right. So -- but for her to make that
18:21:57 10 happen, she needs to, in Exhibit 29, which is the
11 interface --

12 A Right.

13 Q There we go.

14 Where it comes -- on Page 3704 where it
18:22:17 15 says here, "Does the applicant meet all of the above
16 criteria," she would click "yes," correct?

17 A Yes.

18 Q And that would be even though -- that
19 would be even though she would have 20 percent

18:22:36 20 Section 8 tenants?

21 A True.

22 Q Okay. Almost done. Okay. Exhibit 76.

23 (Whereupon Exhibit 76 was marked for
24 identification, a copy of which is attached hereto.)

18:23:19 25 ///

DECLARATION
OF
PENALTY OF PERJURY

I declare under penalty of perjury, under the laws of the State of California, that I have read the foregoing transcript, I have made any corrections, additions or deletions that I was desirous of making in order to render the within transcript true and correct, and

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of _____, _____.

MATTHEW R. NOEL

1 CERTIFICATION OF

2 CERTIFIED SHORTHAND REPORTER

3
4 I, the undersigned, a Certified Shorthand
5 Reporter of the State of California do hereby
6 certify:

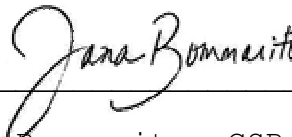
7 That the foregoing proceedings were taken
8 before me at the time and place herein set forth;
9 that any witnesses in the foregoing proceedings,
10 prior to testifying, were placed under oath; that a
11 verbatim record of the proceedings was made by me
12 using machine shorthand, which was thereafter
13 transcribed under my direction; further, that the
14 foregoing is an accurate transcription thereof.

15 That before completion of the deposition,
16 a review of the transcript [] was [] was not
17 requested.

18 I further certify that I am neither
19 financially interested in the action nor a relative
20 or employee, nor any attorney of any of the parties.

21 IN WITNESS WHEREOF, I have this date,
22 June 8, 2014, subscribed my name.



23
24 

25 Jana Bommarito, CSR No. 10880